IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 8320 of 2004(M)

AGAINST THE ORDER DATED 23/01/04 IN EA.67/04,EP.355/1993 IN OS.461/1984 of PRL.M.C.,TRIVANDRUM

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PETITIONER:

LEKSHMIKUTTY AMMA,PARUKUTTY AMMA,
MAVARTHALA MADAM,NEDUMPURATHU MURI,
CHETIVILAKAM VILLAGE.

BY ADV. SRI.D.SAJEEV
SMT.LIGEY ANTONY

RESPONDENTS:

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1. KARTHIKEYAKURUKKAL,RESIDING AT
POOVANATHU VILAKATHU VEEDU,T.C.4/287,
MADATHUVILAKAM VILLAGE,FROM MAVARTHALA MADAM,
NEDUMPURATHU MURI,CHETTIVILAKAM VILLAGE.

2. LALITHAMBIKA DEVI,BINCHU VEEDU,
MUDAVARAM MURI,ANCHAMADA VILLAGE.

BY ADV. SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 8320 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF EA NO.67 OF 2004.

EXT.P2 : TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER.

EXT.P3 : TRUE COPY OF THE ORDER DT.23.1.04 IN EA NO.67 OF 2004 IN EP NO.355 OF 1993 IN OS NO.461 OF 1984.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 8320 OF 2004

Dated this the 28th day of May, 2007

JUDGMENT

The judgment debtor in a decree for partition and separate possession has filed this writ petition impugning Ext.P3 order passed by execution court, in EA No.67 of 2004. The decree was already executed almost in full and what remained was payment of the sum of Rs.28,941/- payable as owelty amount by the writ petitioner to the respondents. Ext.P1 is copy of EA No.67 of 2004, wherein the prayer was that an advocate commissioner be appointed for assessing the value of the judgment debtor's property which had already been delivered over to him and for submission of a plan and report with his statement for releasing the owelty amount of Rs.28,941/-. Ext.P1 is claimed to be filed in response to an order by the court on 09.04.02 directing the decree holder to take steps for the appointment of a commissioner, so that the extent of the property necessary for releasing the owelty amount can be assessed.

2. The learned Munsiff has passed Ext.P3 order which is a very elaborate one. A reading of Ext.P3 will show that the learned Munsiff was under the impression that the decree has not been executed at all. But it is now clear that the decree for partition had been executed to a

substantial extent and what remained was only the payment of owelty amount by the petitioner to the respondent-decree holder. Most of the observations in Ext.P3, in my opinion, were unnecessary to decide the surviving issue. The learned Munsiff need have only allowed the application as it was prayed for.

3. Under these circumstances, Ext.P3 will stand modified to the extent of directing the advocate commissioner appointed under Ext.P3 to demarcate a reasonable portion of 52 cents of property already delivered over in execution proceedings to the petitioner which in her opinion will be sufficient for realisation of the owelty amount of Rs.28,941/-. All observations in Ext.P3 to the effect that the property continues to be in possession of the parties and that the parties have been delaying the execution of the partition decree are deleted.

The inspection shall be conducted by the commissioner with notice to both the parties. The inspection as directed above will be conducted and report filed by the commissioner at her earliest and at any rate within six weeks of receiving a copy of this judgment.

PIUS C. KURIAKOSE, JUDGE

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